

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

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United States District Court	District: <u>South Carolina</u>
Name (under which you were convicted): <u>Anthony L. Brown</u>	Docket or Case No.: <u>9:13-CV-2595-RBH-BM</u>
Place of Confinement : <u>Broad River Correctional Institution</u>	Prisoner No.: <u>251490</u>
Petitioner (include the name under which you were convicted) <u>Anthony L. Brown</u>	Respondent (authorized person having custody of petitioner) <u>S.C. Dept. of Corrections</u>
The Attorney General of the State of <u>South Carolina</u>	

## PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Colleton County Court of General Sessions, Post Office Box 1725,  
Walterboro, SC 29488

(b) Criminal docket or case number (if you know): (2004-GS-15-420); (2004-GS-15-421)

2. (a) Date of the judgment of conviction (if you know): March 13, 2007

(b) Date of sentencing: March 13, 2007

3. Length of sentence: 40 years & 30 years ran concurrent

4. In this case, were you convicted on more than one count or of more than one crime?  Yes  No

5. Identify all crimes of which you were convicted and sentenced in this case: Murder; Armed Robbery

6. (a) What was your plea? (Check one)

(1) Not guilty       (3) Nolo contendere (no contest)  
 (2) Guilty       (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

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(c) If you went to trial, what kind of trial did you have? (Check one)

Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court: S.C. Court of Appeals

(b) Docket or case number (if you know): 2008 - UP - 365

(c) Result: Dismissed

(d) Date of result (if you know): July 11, 2008

(e) Citation to the case (if you know): Anders Brief

(f) Grounds raised: Applicant unknowingly, unwillingly & involuntarily entered guilty plea.

(g) Did you seek further review by a higher state court?  Yes  No

If yes, answer the following:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result (if you know): \_\_\_\_\_

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_

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(h) Did you file a petition for certiorari in the United States Supreme Court?

 Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Colleton County Court of Common Pleas(2) Docket or case number (if you know): 2008 - CP - 15 - 1038(3) Date of filing (if you know): November 6, 2008(4) Nature of the proceeding: Post - Conviction Relief(5) Grounds raised: "Ineffective assistance of counsel" in that counsel failed to subpoena witnesses known at the time of the guilty plea ; failed to properly investigate & interview witnesses ; failed to advise defendant of rights/consequences of pleading guilty ; Knowingly & willfully withheld evidence that deprived applicant of his right to due process ; performance fell below an objective standard of reasonableness ; Prosecutorial misconduct" in that prosecution failed to disclose agreements made by co-defendant and "Judge's Error" in that the plea judge abused discretion in failing to ensure that Applicant's plea was freely & voluntarily entered .

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

 Yes  No(7) Result: Denied and dismissed with prejudice(8) Date of result (if you know): November 18, 2010

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

## (7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes       No

## (7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion? /

(1) First petition:  Yes  No

(2) Second petition:  Yes  No

(3) Third petition:  Yes  No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

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12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE: Ineffective Assistance of Counsel for performing below an objective Standard of reasonableness**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defense counsel advised petitioner to plead guilty b/c it "would have been an emotional trial based on the horrendous crime scene," he said. (App. 79) "And b/c anyone accused of the crime would be convicted." Counsel was also ineffective for advising petitioner to plea guilty when petitioner's grandmother could provide an alibi, but not an airtight alibi. Defense counsel stated that he did not want to go to trial b/c after practicing law for 35 years "this was, without a doubt, the worst jury that I have ever drawn..." (App. 67, 1.17-68, 1.17) and (App. 67, 11.6 - 16)

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(b) If you did not exhaust your state remedies on Ground One, explain why:

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

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(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction Relief

Name and location of the court where the motion or petition was filed: Colleton County Court of Common

Pleas, P.O. Box 1725, Walterboro, SC 29488

Docket or case number (if you know): 2008-CP-15-1038

Date of the court's decision: September 3, 2010

Result (attach a copy of the court's opinion or order, if available): Denied and dismissed with prejudice.

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Supreme Court of South Carolina, P.O. Box 11330, Columbia, S.C. 29211

Docket or case number (if you know): 2011-192935

Date of the court's decision: May 15, 2013

Result (attach a copy of the court's opinion or order, if available): Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_  
\_\_\_\_\_

**GROUND TWO:** Ineffective Assistance of Counsel for failing to comply with mandate set forth in advising the voluntariness of guilty plea phase & rights & consequences of pleading guilty  
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Applicant was not informed about the meaning of reasonable doubt, nor was he informed that the burden of proof that the state would have to meet at the trial of the case was proof beyond a reasonable doubt. (App. pg. 8, Lines 20-25; pg. 9, Lines 1-25; pg. 10, Lines 1-3). Counsel at PCR also elaborated with the court on this subject. He stated that he didn't see the "Burden of Proof" instructions in the transcript. (App. 71. pg. 34, Lines 5-6;

App. 70 . pg.33 , Lines 1-25 ; 71 . pg. 34 , Lines 1-4 )

(b) If you did not exhaust your state remedies on Ground Two, explain why: Counsel for petitioner briefed the one arguable legal issue , he felt, which arose during the post-conviction relief process .

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?  Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction Relief

Name and location of the court where the motion or petition was filed: Colleton County Court of Common Pleas

Docket or case number (if you know): 2008 - CP - 15 - 1038

Date of the court's decision: September 3, 2010

Result (attach a copy of the court's opinion or order, if available): Denied and dismissed with prejudice.

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Supreme Court of South Carolina , P.O.Box 11330, Columbia , SC 29201

Docket or case number (if you know): 2011 - 192935

Date of the court's decision: May 15, 2013

Result (attach a copy of the court's opinion or order, if available): Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Counsel for petitioner briefed the one arguable legal issue, he felt, which arose during the post-conviction relief process. Appellate Defense counsel neglected to argue the issue & preserve it for appellate review.

(e)

**Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two

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**GROUND THREE:**

Ineffective Assistance of Counsel for failing to subpoena witnesses known at the time of the guilty plea.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

It is undisputed that petitioner's grandmother provided an alibi, as both defense counsel and petitioner agreed, and would have at trial. (App. 48, l. 10-49, l.1) Petitioner's grandmother and other witnesses were not subpoenaed by trial counsel. (App. 49, ll. 4-9; app. 52, ll. 12-17) Defense counsel did substantiate petitioner was with grandmother. (App. 65, l. 22-66, l. 2) The dismissal order was incorrect wherein it stated: "counsel testified that none of the witnesses could substantiate an alibi defense for applicant & that applicant failed to present specific evidence that counsel committed errors..." (App. 81)

(b) If you did not exhaust your state remedies on Ground Three, explain why:

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(c)

**Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

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(d)

**Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction Relief

Name and location of the court where the motion or petition was filed: Colleton County Court of Common

Plens, P.O. BOX 1725, Walterboro, SC 29488Docket or case number (if you know): 2008-CP-15-1038Date of the court's decision: September 3, 2010Result (attach a copy of the court's opinion or order, if available): Denied & dismissed with prejudice.(3) Did you receive a hearing on your motion or petition?  Yes  No(4) Did you appeal from the denial of your motion or petition?  Yes  No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: The Supreme Court of South Carolina, P.O. Box 11330, Columbia, SC 29211Docket or case number (if you know): 2011-192935Date of the court's decision: May 15, 2013Result (attach a copy of the court's opinion or order, if available): Denied

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: 

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**GROUND FOUR: Subject Matter Jurisdiction**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Indictments for Murder/Armed Robbery lacks "True Bill" stamp. True Bill is written in as "True Bill." Indictments lack date under grand jury foreman's name. Clerk of court mailed applicant a copy of the original indictments on July 16, 2009 and stated that the indictments back in 2004 were not clocked-in (published by clerk of court.) See: Exhibit A

(b) If you did not exhaust your state remedies on Ground Four, explain why: B/c Subject Matter  
Jurisdiction is just being raised for the 1st time.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

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13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?  Yes  No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: "Ineffective Assistance of Counsel for failing to advise, defendant of rights/ consequences of pleading guilty" — This ground was not raised b/c appellate defense counsel felt the need to argue only one arguable legal issue which arose, along with others, during the PCR process.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Kenneth L. Tootle, Esq., P.O. Box 1321, Beaufort, SC 29901

(b) At arraignment and plea: Same as line (a).

(c) At trial: N/A

(d) At sentencing: Same as line (a).

(e) On appeal: Robert M. Pachak, S.C., Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589

(f) In any post-conviction proceeding: J.D. Byran, Esq., P.O. Box 1111, Walterboro, SC 29488

(g) On appeal from any ruling against you in a post-conviction proceeding: Robert M. Dudek, S.C., Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?  Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

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(b) Give the date the other sentence was imposed:

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(c) Give the length of the other sentence:

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(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  Yes  No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Reversed & Remanded.

or any other relief to which petitioner may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 09/19/13 (month, date, year).

Executed (signed) on 09/19/13 (date).

Anthony L. Brown  
\_\_\_\_\_  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_